Filed 1/15/13 In re J.R. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re J.R., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. ROSA C., Defendant and Appellant.	A135648 (Alameda County Super. Ct. No. OJ11017270)

Rosa C. (Mother) appeals from the order of the Alameda County juvenile court terminating her parental rights as to her son J.R. in accordance with Welfare and Institutions Code section 366.26.[1] Mother contends: (1) the juvenile court's finding that J.R. was adoptable is not supported by substantial evidence, and (2) the juvenile court abused its discretion in not placing J.R. with a maternal relative. We conclude that neither of these contentions has merit, and affirm the termination order.

BACKGROUND

Much of the history of this matter was set out in our 2011 opinion denying Mother's petition for an extraordinary writ to set aside the order setting the permanent plan hearing. With minor editorial alterations, we adopt it here:

[1] Statutory references are to the Welfare and Institutions Code.

"J.R. was taken into protective custody on July 6, 2011, at nearly 16 months old, and was ordered detained on an original petition filed by the Alameda County Social Services Agency (Agency) two days later that alleged that Mother and one alleged father each failed to protect and failed to provide support. (§ 300, subds. (b) & (g).) A second alleged father was identified by the time of detention, resulting in a petition amendment to add failure to support as to him. Neither man was ultimately located, and the facts and proceedings as to them will be given only passing reference.

"Since the age of two months, J.R. had been cared for by Jessica C., but Jessica C. expected to give birth to a child of her own who would need immediate heart surgery, and had no one willing to take care of J.R. without parental support. Jessica C. had begun caring for J.R. in May 2010 because her boyfriend (now gone to be with an ailing parent in Honduras) had known Mother and was babysitting J.R. when Mother was arrested for selling drugs. Mother was eventually deported to El Salvador. Jessica C. had cared continuously for J.R. ever since, she and her boyfriend not knowing what else to do. Mother had no family in the area, and neither she nor either alleged father ever returned for J.R. or provided support. Jessica C. took the child in as her own but felt taken advantage of because Mother and an alleged father posted on Facebook.com and, Jessica C. learned through friends, 'were "partying" and having fun.'

"Mother, 26 years old, revealed through a jurisdiction report that she was not married to either alleged father and that the originally named one, Velasquez, while named on the birth certificate, was not the biological father. Mother and Velasquez were arrested in San Francisco in May 2010 for selling drugs and deported that year. Mother tried to reenter the country in April 2011 but was 'arrested in Texas . . . and subsequently deported back to El Salvador.' She was unable to send money for his support because she had just gotten a job and was financially assisting her siblings. She wanted to bring J.R. home and had spoken by phone with the other alleged father, Hernandez, who was then in Canada, but she did not know where he was now, his number having been disconnected. Mother currently worked two jobs (at a hair salon and a restaurant) and went to school. Asked why she left J.R. behind, she said she did not want to but was

being deported. She 'tried to come back' for J.R. but was arrested in Texas for attempted illegal entry, jailed for three months, and deported again. She had two 2009 arrests in San Francisco, one for selling crack cocaine and the other for a probation violation. She denied ever using drugs.

"Jessica C. reported last speaking with Hernandez in late June. He told her he was sending money and a passport for J.R. but never did. He had since left Canada to go to Honduras. Jessica C. and a daughter were very emotional, Jessica C. saying J.R. was not immunized because they were worried they might be arrested or J.R. would be taken from them. She had since spoken with Mother, evidently by phone, to relate what was going on, and Mother cried and said she wanted her son. Child welfare worker (CWW) Aaron Leavy had also spoken with Mother, via a telephone interpreter service, and she expressed a strong desire to reunite with J.R. in El Salvador. She also told Leary and CWW Sylvia Joyner by phone that she had a second child, an 11–year–old son, living with her there and did not want to return to the United States.

"Mother remained in El Salvador throughout these proceedings. The petition was sustained in its entirety as to her on August 8, 2011 when her counsel, after a continuance to investigate, submitted on the jurisdiction report. Failure to protect was based on her being arrested in May 2010, when J.R. was two months old, her sale of illegal drugs and deportation, a history of substance abuse and dependence, her criminal arrest history, her failure to provide J.R. with adequate food, clothing and shelter, her not providing care, support, or ensuring that J.R.'s medical needs were met, and his having had no immunizations or any other medical care since birth. Failure to provide was based on her arrest and deportation, current residence in El Salvador, failure to provide support or care, and being unable or unwilling to provide J.R. with necessary care, support, and supervision.

"While submitting on jurisdiction, Mother's counsel did request a contest on the Agency's proposal to bypass reunification services, urging that there was no legal basis for it. The matter was continued for that contest to occur on August 18, at the disposition hearing.

"A disposition report filed on August 5 urged declaring dependency and bypassing services, but with the Agency cooperating with the El Salvadorian Embassy (Embassy) and El Salvadorian Consulate (Consulate) on possible placement of J.R. directly with Mother if appropriate. CWW Joyner had spoken with Jose Lagos, a legal counselor on immigration matters at the Embassy in Washington, D.C. about having Mother assessed in El Salvador for possible reunification. Lagos had suggested that Joyner forward a letter about the case to Ambassador Francisco Altschul to request the support of the Instituto Salvadoreño de Protección al Menor (the Institute), which could then contact Mother to gain her approval and begin an assessment of her readiness for placement. Lagos gave no timeframe for completing that process, but advised that J.R. would need a passport if he went to El Salvador. A second CWW with experience from a similar case recommended working with Consul General Ana Valenzuela in San Francisco for the assessment and with a contact from the Office of Homeland Security in San Francisco to help coordinate legalities for staff transporting J.R. The Agency had also a continuance in its jurisdiction report to begin these efforts.

"Recent contacts with Mother indicated that she had received paperwork from 'the CPS Agency in El Salvador' (evidently the Institute), that Leary and Joyner had sent her a letter and birth certificate, and ensured that contact information between Mother's counsel and Salvadorian officials was given. A conference call with the Embassy was set for the date of the report, August 5, 2011.

"The report also related J.R.'s general success in a bilingual foster home, visits with Jessica C. (halted when she gave birth three days earlier), progress with vaccinations and medical care, and need for evaluation of a 'sacral dimple' that might indicate spina bifida. Ongoing assessment was being made of a nonrelative extended family home suggested by Jessica C.

"Orders made at the August 18, 2011 disposition hearing were based solely on the jurisdiction and disposition reports, no party putting on testimony or other evidence, and the court agreed that various statements by counsel all around, while useful for future investigation, were not evidence for the decisions of the day. One pertinent development

was that, as the Agency had stated at the jurisdiction hearing in response to concern by J.R.'s counsel that postponing a plan hearing was not in his best interest, the Agency was now disposed to set a plan hearing while considering the progress of the case in the intervening time.

"The court declared dependency, bypassed services to Mother under subdivision (b)(9) on a finding by clear and convincing evidence of willful abandonment by Mother, and set a plan hearing for December 8, 2011." (*Rosa C. v. Superior Court* (Dec. 19, 2011, A133293) [nonpub. opn.].)

After we denied Mother's petition, jurisdiction was reinvested with the juvenile court in February 2012.[2] In anticipation of the permanent plan hearing, now set for April 5, CWW Loomis prepared a "366.26 WIC Report." Her recommendation was that Mother's parental rights should be terminated so that J.R. could be adopted.

CWW Loomis advised the court that J.R. "is adoptable, and he is placed with a family that is willing to adopt him. The Mother . . . requested that the maternal grandmother's home in El Salvador be evaluated for placement if the minor could not be returned to her. [¶] Child Welfare Worker Rachel Blumberg has been in ongoing contact with the Salvadoran Consulate. . . . [¶] . . . Ms. Blumberg spoke with the maternal grandmother in El Salvador, who confirmed that she would be willing to take placement of the minor if he could not be returned to the Mother. The Consulate provided a very brief evaluation of the home where the Mother and grandmother live together,[3] with no significant problems noted." However, since December 2011, "All attempts to reach the Mother and the Consulate since then have met with no response."

Concerning the current foster and prospective adoptive parents, CWW Loomis reported:

"The foster parents are friends of [J.R.]'s former caregiver. The husband is 32 years old, and works in a factory. The wife is 29, and is a stay at home parent. The

[2] All unspecified further dates are in 2012.

[3] At another point in her report CWW Loomis informed the court that Mother "was deported to El Salvador for selling drugs when [J.R.] was two months old."

wife had three children from a prior relationship, ages 11, 6, and 2. Her parents also reside in the home. The family lives in a 2-bedroom apartment: the foster parents use one bedroom, her parents sleep in the living room, and [J.R.] shares the remaining bedroom with the three other children. (An exemption was granted to approve this arrangement.)"

"The foster parents . . . appear able to meet [J.W.]'s needs. They share his Salvadoran culture. There is some concern about the difficulties of having eight people in a two-bedroom apartment. Recently the foster mother has raised concerns about [J.R.]'s acting out behaviors, but she and her husband remain committed to adopting him."

CWW Loomis's "Evaluation" concluded as follows: "A family stepped forward to request placement at the time of the dependency; they knew . . . [J.R.] through mutual friends. The family completed the Relative Approval process, and [J.R.] was placed in the home on 11/12/2011. An adoptive home study is in progress. [¶] The Mother has not had contact with [J.R.] since he was two months old. Two years have now passed, and [J.R.] is on his third set of caregivers since his Mother's absence. The Mother was aware of the steps she needed to take in order to have any possibility of placement in El Salvador, and she has not followed through. [J.R.] needs the security of a family that will be there for him permanently. It is therefore respectfully recommended that parental rights be terminated so that the child may be adopted. The Mother is opposed to adoption."

The April 5 hearing was brief. Mother was not present, but she was represented by counsel. Without objection, CWW Loomis's report was received in evidence, whereupon the Agency in effect submitted on it. Counsel for J.R. advised the court that she agreed with the Agency's recommendation, as well as "the Agency's assessment of his adoptability and . . . their evaluation."

Mother's counsel then addressed the court: "If my client were able to be here, I know she would oppose and object to termination of her parental rights and permanently planning her child to adoption. I will raise that opposition and object on her behalf. I

know that she is also aggrieved by the bypass of reunification services to her[4] and disappointed that the Agency did not do more to place [J.R.] with maternal family members in El Salvador. [¶] Those would be her concerns and that's what she would ask the Court to consider and I will do that on her behalf, but I fully expect to be disappointed, quite frankly. Submitted."

The juvenile court then terminated Mother's parental rights. The court found "there is clear and convincing evidence that it is likely that the child will be adopted." The court also found that continued placement of J.R. with the Agency "is necessary and appropriate."

REVIEW

The Juvenile Court's Finding That The Minor Is Adoptable Is Supported by Substantial Evidence

Mother's firsts contention is directed against the finding that J.R. was likely to be adopted within a reasonable time. She details all of the manifestations of J.R. being "an aggressive two-year old," and is impressed that the Agency "had no other prospective families interested in adopting." Mother concludes from this that because J.R. has "severe behavioral issues and speech delay;" because the prospective adoptive parents were not shown to "be able to . . . financially provide" for J.R.; and because there is only one set of prospective adoptive parents, "the evidence provides no reasonable assurance that the goal of permanency for the child will be fulfilled by terminating parental rights and the risk that the child will be left a legal orphan is high." Thus, Mother submits that her parental rights should not have been terminated, and the court should have chosen " a more appropriate plan, such as guardianship or relative placement with maternal relatives in El Salvador." We are not persuaded.

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[4] In the prior proceeding, we rejected Mother's argument that the denial of reunification services was error because there was substantial evidence to support the juvenile court's finding that Mother had willfully abandoned J.R. (*Rosa C. v. Superior Court, supra*, A133293.)

"At a section 366.26 hearing, the court may select one of three alternative permanency plans for the dependent child—adoption, guardianship or long-term foster care. [Citation.] If the child is adoptable, there is a strong preference for adoption over alternative permanency plans. [Citations.]

"A finding of adoptability requires 'clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.' [Citations.] The question of adoptability usually focuses on whether the child's age, physical condition and emotional health make it difficult to find a person willing to adopt that child. [Citation.] If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home. [Citation.] If the court finds the child is likely to be adopted within a reasonable time, the juvenile court is required to terminate parental rights unless the parent shows that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1)(A) and (c)(1)(B). [Citation.]

"On review, we determine whether the record contains substantial evidence from which the juvenile court could find clear and convincing evidence the child was likely to be adopted within a reasonable time. [Citations.] We must affirm the juvenile court's rejection of any exception to termination of parental rights if the court's findings are supported by substantial evidence. [Citation.]

"The appellate court does not reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court. [Citations.] The substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts. [Citation.]" (*In re Michael G*. (2012) 203 Cal.App.4th 580, 588-589.)

First of all, the characterization of J.R as "aggressive" is Mother's, not CWW Loomis's: there is no such description in the "366.26 WIC Report." The prospective adoptive mother, with considerable experience from raising her own three children, obviously did not believe J.R.'s behavioral problems were unmanageable, and CWW

Loomis agreed, expressing no fears that the prospective adoptive parents could not cope, and telling the court that J.R. "is a healthy two-year-old child with no developmental, emotional or behavioral issues severe enough to preclude adoption." The same is true for the financial ability of the prospective adoptive parents to assume responsibility for J.R. The matter of the prospective parents' crowded living conditions was obviously considered by the Agency and not deemed an impediment to adoption, as evidenced by the "exemption . . . for this arrangement" which CWW Loomis noted the Agency had granted.

Additional factors mentioned—and not mentioned—by Mother do not disfavor the reasonable likelihood of J.R.'s adoption. At the time of the hearing, the Agency was arranging a "speech evaluation" for J.R. And as to J.R.'s physical condition, the possibility of spina bifida noted in our prior opinion has been ruled out.

Finally, the absence of other prospective adoptive parents is not significant. Not even one set of prospective adoptive parents is required. "To be considered adaptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent ' "waiting in the wings." ' " (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.) Courts have often cited these apt remarks: " ' "the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*." ' " (*In re Gregory A.* (2005) 126 Cal.App.4th 1554,1562, quoting *In re Asia L.* (2003) 107 Cal.App.4th 498, 510.)

We conclude that the juvenile court's finding of adoptability is supported by substantial evidence.

The Juvenile Court Did Not Abuse Its Discretion In Not Placing The Minor With A Maternal Relative

Mother's challenge to the placement begins with the denial of her petition, a week before the termination, to change J.R.'s name so that he could secure an El Salvadoran passport. She terms this an abuse of the court's discretion which had the consequence of "effectively denying [J.R.'s] placement with [his] maternal grandmother." "Moreover, the Agency failed to make diligent efforts to investigate maternal grandmother or other maternal relatives as possible caretakers when [J.R.] needed a new placement." Mother's roundhouse conclusion is that the juvenile court "failed to make any independent judgment of the suitability of the maternal grandmother's home" and "never exercised its independent judgment to assess [J.R.]'s best interests regarding placement." We agree with none of this.

The juvenile court denied without prejudice Mother's motion to change J.R.'s name after hearing opposition from counsel for the Agency and J.R. Their opposition was primarily that granting the motion would have bureaucratic complications that, in the words of Agency's counsel, "could very well cause and delay in the .26 Hearing and/or adoption." With that hearing only a week away, the court's denial cannot be termed an abuse of its discretion.

The determination of J.R.'s placement "was committed to the sound discretion of the juvenile court, and the trial court's ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. . . . [W]hen a court has made a custody determination in a dependency proceeding, ' "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]. " ' [Citations.] And we have recently warned: 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The issue of whether J.R. "needed a new placement" presumes the inadequacy of the current placement with the foster and prospective adoptive parents. There is nothing in the record to validate such a presumption. Nor is there anything in the record identifying "other maternal relatives" beside the maternal grandmother as "possible caretakers." Mother tries to finesse that omission by attacking the Agency for not seeking them out and having them evaluated as caretakers for J.R., and "never gave maternal grandmother a fair chance to seek placement."

Although there are hints Mother still entertains hope of having J.R. placed with her, that is clearly not feasible. It is impossible to imagine a juvenile court pulling a small child out of a stable environment with prospective adoptive parents and sending the child to a different country to a parent who abandoned the child when he was two-months-old and has not seen him since then. Substituting the grandmother for the mother is hardly an improvement. There is nothing in the record establishing that the grandmother has ever seen J.R., so there is obviously no existing emotional bond with her. Mother's attempt to blame the Agency for an incomplete investigation is decisively refuted by what CWW Loomis reported to the court: "The Mother was aware of the steps she needed to take in order to have any possibility of placement in El Salvador, and she has not followed through," and "All attempts to reach the Mother and the Consulate since then have met with no response." In these circumstances, it is difficult to conceive how the Agency can be faulted for a lack of diligence.

"In any custody determination, a primary consideration in determining the child's best interest is the goal of assuring stability and continuity. [Citation.] 'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role. That need will often dictate the conclusion that maintenance of the current arrangement could be in the best interests of that child.' " [Citations.] [¶] . . . [¶] After the termination of reunification services, the parents' interests in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact there is a rebuttable presumption that continued foster care

is in the best interests of the child." (*In re Stephanie M.*, *supra*, 7 Cal.4th 295, 317.) By contrast, a grandmother's interests "[are] not significant compared to the need of the child for stability." (*Id.* at p. 324.) CWW Loomis was emphatic on this need of J.R

There is nothing in the record substantiating accusation that the juvenile court "failed to make any independent judgment of the suitability of the maternal grandmother's home." Equally baseless is the claim that the court "never exercised its independent judgment to assess [J.R.]'s best interests regarding placement." The record does demonstrate that the J.R.'s interests were indeed paramount in the court's mind at all times following our disposition of Mother's writ petition.

We conclude that the juvenile court did not abuse its discretion in its placement decision.

DISPOSITION

The order is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Haerle, J.